



## Education Law Center

*Standing Up for Public School Children*

*David G. Sclarra, Esq.*  
*Executive Director*

January 6, 2011

**Student Rights Project**

*Elizabeth Athos, Esq.*  
*Senior Attorney*

*Ruth Deale Lowenkron, Esq.*  
*Senior Attorney*

*Lauren S. Michaels, Esq.*  
*Greenberg Traurig*  
*Equal Justice Works Fellow*

*Aimee Roche*  
*Intake Coordinator*

John Worthington, Acting Director  
Office of Special Education Programs (OSEP)  
New Jersey Department of Education  
P.O. Box 500  
Trenton, NJ 08625-0500  
Facsimile: (609) 984-8422  
**VIA OVERNIGHT MAIL AND FACSIMILE**

**Re: Complaint Investigation Request: School Number 2, Paterson**

Dear Mr. Worthington:

As you know, Education Law Center (ELC) filed a complaint, which was received by the New Jersey Department of Education (NJDOE), Office of Special Education Programs (OSEP) on December 28, 2010, on behalf of [REDACTED] as well as all parents of students in School Number 2 who are not receiving speech language services in violation of their IEPs and/or in violation of their right to FAPE. Because the enclosed complaint investigation request raises the same issues as the complaint filed on December 28, 2010, please consolidate the enclosed complaint with the aforementioned complaint regarding School Number 2.

Thank you in advance for your attention to this matter.

Sincerely,

Lauren S. Michaels, Esq.

Encl.

Cc: Superintendent Donnie Evans  
Sidney A. Sayovitz, Esq.

[REDACTED]

NEW JERSEY DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION PROGRAMS  
COMPLAINT FORM

Date: January, 6, 2011

To: John Worthington  
Office of Special Education Programs (OSEP)  
NJ Department of Education  
P.O. Box 500  
Trenton, NJ 08625-0500

Relationship to Student(s): (Check One)

Parent/Guardian  Attorney  Advocate  Other: \_\_\_\_\_

Name: Lauren S. Michaels, Esc., Education Law Center

Address: 60 Park Place, Suite 300, Newark, NJ 07102

Phone: (973) 624- 1815 x 15 Fax: (973) 624 - 7339 Email address: lmichaels@edlawcenter.org

Provide the name of the student or specify the group of students affected by the alleged violation(s):

The students affected by the violations are [redacted] minor child of [redacted] and all students at School Number 2 who entitled to but who are not receiving speech language services in violation of their IEPs and/or in violation of their right to FAPE.

School where the alleged violation(s) occurred: School Number 2  
District: Paterson Public Schools County: Passaic

1. Please check which statement applies:

I am currently involved in, or have recently requested, a due process hearing. I have enclosed a copy of the request.

I am considering filing for a due process hearing. I will send a copy of the request.

I am not planning on filing for a due process hearing.

<sup>6</sup> In the case of a homeless child, please provide available contact information.

**Note: Any issues contained in a request for a complaint investigation that are also the subject of a due process hearing will be set aside until the conclusion of the hearing. If the Administrative Law Judge makes a ruling on the issue(s), that ruling is binding.**

2. Briefly state the specific violation(s) of **special education law or regulation** that you believe occurred. If you choose to attach additional information or documentation, you must nevertheless summarize the alleged violations, as you see them.

Please see attached  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Specify the period of time or dates when the alleged violation(s) occurred. September 2010 to the present

**Note: The complainant must allege a violation that occurred not more than one year prior to the date that the complaint is received.**

4. Is/Are the alleged violation(s) continuing at present?  X  Yes   No

5. **State the relevant facts**, including any claim that the district has failed to provide services required by the IEP of a student with disabilities. If you are claiming that the district has failed to implement the IEP, *please include a copy of the entire IEP*. (Attach additional pages, if necessary. If you have other written documentation from the school that you believe would assist in verifying the violation, please submit them with this request).

Please see attached  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_

6. Please describe how the issue(s) could be resolved. Attach additional pages as necessary.

Please see attached

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7. Please list the district personnel you have already talked with to resolve this complaint, along with their response(s) to your request.

ELC has been in communication for counsel for Paterson Public Schools regarding Complaint No. C2011-4193, filed by ELC on behalf of preschool students and their parents on November, 8, 2010. We are proceeding with this complaint on behalf of our clients who are parents of school-aged children and similarly situated parents until the complaints are fully resolved, but would be willing to participate in mediation or other settlement efforts.

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**Complainants are required to forward a copy of the complaint to the Chief School Administrator of the district/education agency against which the complaint is directed at the same time the complaint is filed with the Department of Education.**

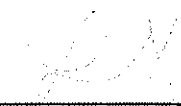
Check below to verify whether:

A copy of the complaint request, along with attachments, was mailed to: Superintendent Donnie Evans and Sid Sayovitz, Esq. (name) on January 6, 2011 (date);

or

A copy of the complaint request, along with attachments, was hand-delivered to: \_\_\_\_\_ (name) on \_\_\_\_\_ (date).

Pursuant to N.J.A.C. 6A:14-9.2(b), please note that a complaint cannot be processed until the OSEP is notified that a copy was provided to the appropriate education agency.

Signature:   
(Person(s) Submitting Request)

**Attachments to Complaint Investigation Request**  
Paterson Public Schools and New Jersey Department of Education

**2. Briefly state the specific violation(s) of special education law or regulation that you believe occurred. If you choose to attach additional information or documentation, you must nevertheless summarize the alleged violations, as you see them.**

Pursuant to N.J.A.C. 6A:14-9.2, Education Law Center (ELC) and its above-named client request an investigation of Paterson Public Schools (Paterson) and the New Jersey Department of Education (NJDOE) into violations of the federal and state implementing regulations of the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C.A. § 1400 et seq. The purpose of this complaint investigation is to investigate to what extent Paterson's and NJDOE's policies, procedures, and practices are resulting in the denial of services to eligible students at School 2 in violation of IDEA's FAPE requirement and in violation of those students' IEPs.

(A) Students with disabilities must receive a free appropriate public education (FAPE) in accordance with their Individualized Education Programs (IEPs), 20 U.S.C.A. § 1401(9); 34 C.F.R. § 300.17(d), N.J.A.C. 6A:14-4.1(a), which includes both special education, which is an individualized educational program designed to meet a child's unique needs, 20 U.S.C.A. § 1400(d)(1)(A); 34 C.F.R. § 300.1(a); N.J.A.C. 6A:14-1.3, and related services, which are developmental, corrective, and other supportive services, including speech language services, that a child needs to benefit from his or her educational program, 20 U.S.C.A. § 1401(26); 34 C.F.R. § 300.34(a); N.J.A.C. 6A:14-3.9.

The above-named student, and upon information and belief, other students in School Number 2 are not receiving speech language services, in violation of FAPE and in violation of their IEPs.

(B) It is the responsibility of the state educational agency, and your office in particular, to ensure that Paterson students receive a free and appropriate public education in accordance with their IEPs. 20 U.S.C.A. § 1412(a)(11)(A). This obligation is heightened because Paterson has been under state operation and control for almost two decades. Upon information and belief, the state educational agency has failed to ensure FAPE to the above-named student and other students in School Number 2 by failing to ensure that there are sufficient speech-language therapists at School Number 2 to meet the needs of students with disabilities who require speech-language services.

**5. State the relevant facts, including any claim that the district has failed to provide services required by the IEP of a student with disabilities. If you are claiming that the district has failed to implement the IEP, please include a copy of the entire IEP. (Attach additional pages, if necessary. If you have other written documentation from the school that you believe would assist in verifying the violation, please submit them with this request).**

On November 8, 2010, ELC filed a complaint investigation request, Complaint No. C2011-4193, with NJDOE's Office of Special Education Programs (OSEP), requesting that OSEP investigate violations of special education law affecting preschool-aged students, including Paterson's failure to provide speech language services to preschoolers.

Upon information and belief, there are dozens of students attending School 2 in Paterson who are entitled to receive speech language services, including many of those in the schools' classes for students with autism and severe language and/or learning disabilities, but who have not received adequate speech language services during the 2010-2011 school year. In some cases, students are not receiving speech-language therapy services that are explicitly required by their IEPs, while in other cases, upon information and belief, child study team members were directed by district supervisors to reduce the speech-language services set forth in the students' IEPs.

Upon information and belief, on or about November 18, 2010, during parent-teacher conferences, parents of children attending School Number 2 learned that their children had not been receiving speech language services since the beginning of the 2010-2011 school year. Upon information and belief, there are currently only two fulltime and one part-time speech-language therapist serving students at School Number 2, but four fulltime speech-language therapists are needed in order to adequately serve the population at that school. Upon information and belief, there have been an inadequate number of speech-language therapists at School Number 2 for the past 3-4 years. In addition, speech-language therapist hours at School Number 2 were recently reduced so that a therapist or therapists from that school could provide services to preschoolers who have been going without required speech-language services.

[REDACTED] born [REDACTED] has been classified as a child with a disability, autism, who is eligible for special education and related services. **Exhibit A.** His IEP for the 2010-2011 school year includes Self-contained Autistic class/full day for 6.5 hours per day; two 30-minute sessions of speech/language therapy per A-F week, in a group of no more than 2 students; one 30-minute session of occupational therapy per week, in a group (2-5), and 5 minutes per day of Nursing – Routine Medication Administration. **Exhibit A.** Upon information and belief [REDACTED] as not received any speech language therapy in the 2010-2011 school year. [REDACTED] mother [REDACTED] [REDACTED] only learned that her son was not receiving speech language services, in violation of his IEP, on or about November 18, 2010, when she learned during parent-teacher conferences that none of the students in her son's classroom were receiving speech language services.

Upon information and belief, speech language services either have not provided at all, or provided to a lesser extent than required by children's IEPs, to some students at School Number 2. Upon information and belief, the parents of these students have not been informed as to when services will be restored, and when and how Paterson will provide compensatory services. Upon information and belief, as referenced in Complaint No C2011-4193, parents have been told that these and other violations of law have been aggravated as a result of the district's budget being audited and "frozen" by NJDOE.

**6. Please describe how the issue(s) could be resolved. Attach additional pages as necessary.**

Upon information and belief, there is a pervasive and illegal failure to provide Paterson students at School 2 with necessary services required by their IEPs. We request that NJDOE investigate these illegal practices under IDEA and New Jersey State law. We also request that the NJDOE investigate its role in failing to ensure an adequate number of speech-language therapists at School Number 2, including the extent to which it provided inadequate supervision and control of the Paterson state-operated district and the extent to which its freezing of Paterson's budget at the beginning of the school year exacerbated these violations.

We seek corrective action with regard to the above-named student and the class of Paterson school-aged students at School 2 who are eligible for speech language services (1) immediate restoration of speech language services; (2) compensatory speech language services; (3) reimbursement of parents' out-of-pocket-expenses for private speech language services; and (4) provision of NJDOE to Paterson of sufficient resources to hire sufficient qualified staff and make other expenditures as required to meet the needs of its students who are entitled to speech language services.

**NEW JERSEY DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION PROGRAMS  
COMPLAINT FORM**

Date: December 22, 2010

To: **John Worthington**  
**Office of Special Education Programs (OSEP)**  
**NJ Department of Education**  
**P.O. Box 500**  
**Trenton, NJ 08625-0500**

Relationship to Student(s): (Check One)

Parent/Guardian  Attorney  Advocate  Other: \_\_\_\_\_

Name: Lauren S. Michaels, Esq., Education Law Center

Address: 60 Park Place, Suite 300, Newark, NJ 07102

Phone: (973) 624- 1815 x 15 Fax: (973) 624 - 7339 Email address: lmichaels@edlawcenter.org

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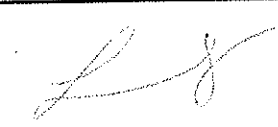
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